



## Inland Empire Waterkeeper

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August 18, 2015

### **VIA CERTIFIED MAIL**

Alpha Materials, Inc.  
Attn: Managing Agent  
6170 20<sup>th</sup> St  
Riverside, CA 92509

Brian Oaks  
Registered Agent for:  
Alpha Materials, Inc.  
841 Hillside Lane  
Norco, CA 92860

Brian Martin Oaks &  
Donald Marshall Oaks  
5334 Agate Street  
Riverside, CA 92509

### **Re: Notice of Violation and Intent to File Suit Under the Clean Water Act**

Dear Mr. Oaks:

I am writing on behalf of Inland Empire Waterkeeper and Orange County Coastkeeper (collectively "Waterkeeper") regarding violations of the Clean Water Act<sup>1</sup> and California's Industrial Storm Water Permit<sup>2</sup> ("Storm Water Permit") occurring at: 6170 20<sup>th</sup> St, Riverside, CA 92509 ("Alpha Materials Facility" or "Facility"). The purpose of this letter is to put Alpha Materials, Inc. ("Alpha Materials"), as the owner and operator of the Alpha Materials Facility, on notice of the violations of the Storm Water Permit occurring at the Alpha Materials Facility, including, but not limited to, discharges of polluted storm water from the Alpha Materials Facility into local surface waters. Violations of the Storm Water Permit are violations of the Clean Water Act. As explained below, Alpha Materials is liable for violations of the Storm Water Permit and the Clean Water Act.

Section 505(b) of the Clean Water Act, 33 U.S.C. § 1365(b), requires that sixty (60) days prior to the initiation of a civil action under Section 505(a) of the Clean Water Act, 33 U.S.C. § 1365(a), a citizen must give notice of his/her intention to file suit. Notice must be given to the alleged violator, the Administrator of the United States Environmental Protection Agency ("EPA"), the Regional Administrator of the EPA, the Executive Officer of the water pollution control agency in the State in which the violations occur, and, if the alleged violator is a

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<sup>1</sup> Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 *et seq.*

<sup>2</sup> National Pollution Discharge Elimination System ("NPDES") General Permit No. CAS000001, Water Quality Order No. 92-12-DWQ, Order No. 97-03-DWQ, as amended by Order No. 2015-0057-DWQ.

corporation, the registered agent of the corporation. *See* 40 C.F.R. § 135.2(a)(1). This letter is being sent to you as the responsible owner and operator of the Alpha Materials Facility, or as the registered agent for this entity. This notice letter ("Notice Letter") is issued pursuant to 33 U.S.C. §§ 1365(a) and (b) of the Clean Water Act to inform Alpha Materials that Waterkeeper intends to file a federal enforcement action against Alpha Materials for violations of the Storm Water Permit and the Clean Water Act sixty (60) days from the date of this Notice Letter.

## **I. BACKGROUND**

### **A. Inland Empire Waterkeeper and Orange County Coastkeeper**

Inland Empire Waterkeeper's office is located at 6876 Indiana Avenue, Suite D, Riverside, California 92506. Inland Empire Waterkeeper is a chapter of Orange County Coastkeeper. Orange County Coastkeeper is a non-profit public benefit corporation organized under the laws of the State of California with its office at 3151 Airway Avenue, Suite F-110, Costa Mesa, California 92626. Together, Inland Empire Waterkeeper and Orange County Coastkeeper have over 2,000 members who live and/or recreate in and around the Santa Ana River watershed. Waterkeeper is dedicated to the preservation, protection, and defense of the environment, wildlife, and natural resources of the Inland Empire watershed. To further these goals, Waterkeeper actively seeks federal and state agency implementation of the Clean Water Act, and, where necessary, directly initiates enforcement actions on behalf of itself and its members.

Members of Waterkeeper use and enjoy the waters that Alpha Materials discharges into, including the Santa Ana River and its tributaries. Members of Waterkeeper use and enjoy the Santa Ana River and its tributaries to picnic, hike, view wildlife, and engage in scientific study including monitoring activities. The discharge of pollutants from the Alpha Materials Facility impairs each of these uses. Further, discharges of polluted storm water from the Alpha Materials Facility are ongoing and continuous. Thus, the interests of Waterkeeper's members have been, are being, and will continue to be adversely affected by Alpha Materials' failure to comply with the Clean Water Act and the Storm Water Permit.

### **B. The Owner and/or Operator of the Alpha Materials Facility**

Information available to Waterkeeper indicates that Alpha Materials, Inc. is an owner and/or operator of the Alpha Materials Facility. Alpha Materials, Inc. is an active California corporation and its registered agent is: Brian Oaks, 841 Hillside Lane, Norco, CA 92860.

Information available to Waterkeeper indicates that Alpha Materials is comprised of Assessor's Parcel Number(s) ("APN"): 175-160-011 and 178-020-026.

Information available to Waterkeeper indicates APN 178-020-026 is owned by Brian Martin Oaks and Donald Marshall Oaks. Waterkeeper refers to Alpha Materials, Inc., Martin Oaks and Donald Oaks collectively as the Alpha Materials Facility "Owner and/or Operator."

The Alpha Materials Facility Owner and/or Operator has violated and continues to violate the procedural and substantive terms of the Storm Water Permit including, but not limited to, the illegal discharge of pollutants from the Alpha Materials Facility into local surface waters. As explained herein, the Alpha Materials Facility Owner and/or Operator is liable for violations of the Storm Water Permit and the Clean Water Act.

**C. The Alpha Materials Facility's Storm Water Permit Coverage**

Certain classified facilities that discharge storm water associated with industrial activity are required to apply for coverage under the Storm Water Permit by submitting a Notice of Intent ("NOI") to the State Water Resources Control Board ("State Board") to obtain Storm Water Permit coverage. *See* Storm Water Permit, Finding #12. Alpha Materials first obtained Storm Water Permit coverage on August 11, 2008. The NOI identifies the owner/operator of the Alpha Materials Facility as "Alpha Materials" and the Facility name and location as "Alpha Materials, 20<sup>th</sup>/ Van Dell Road, Riverside, CA 92509." The NOI lists the Facility is 9.75 acres in size and 90 percent impervious. The NOI lists the Waste Discharge Identification ("WDID") number for the Alpha Materials Facility as 8 33I021735.

Information available to Waterkeeper indicates the Alpha Materials site is comprised of parcels APN 178-020-026 and APN 175-160-011 spanning 3.84 and 9.75 acres, respectively. Accordingly, the Facility consists of a total of 13.59 acres, leaving 3.84 acres at the Facility without Storm Water Permit coverage.

The NOI lists the Standard Industrial Classification ("SIC") code for the Alpha Materials Facility as 411 (Cement Manufacturing). While "411 (Cement Manufacturing)" is not a SIC code, it is an industrial category listed in the Storm Water Permit. *See* Storm Water Permit, Attachment A, ¶ 1. Facilities subject to storm water effluent limitation guidelines, new source performance standards, or toxic pollutant effluent standards (40 CFR Subchapter N), which includes Cement Manufacturing, must obtain coverage under the Storm Water Permit for the entire Facility. *Id.*

A second NOI, also dated August 11, 2008, lists the SIC codes for the Alpha Materials Facility as 3531 (Industrial and Commercial Machinery), 3255 (Structural Clay Products), and 3297 (Non-Clay Refractories). Facilities classified as SIC codes 20XX through 39XX must have permit coverage for the entire facility. *See* Storm Water Permit, Attachment A, ¶ 2.

As explained herein, Waterkeeper informs Alpha Materials that it has failed to obtain Storm Water Permit coverage for all industrial operations and areas, and thus unpermitted discharges are ongoing, in violation of the Clean Water Act. In the event Alpha Materials does have Storm Water Permit coverage for these operations, it is in violation of the Storm Water Permit's procedural and substantive requirements.

**D. Storm Water Pollution and the Waters Receiving Alpha Materials' Discharges**

With every significant rainfall event millions of gallons of polluted storm water originating from industrial operations such as the Alpha Materials Facility pour into storm drains and local waterways. The consensus among agencies and water quality specialists is that storm water pollution accounts for more than half of the total pollution entering surface waters each year. Such discharges of pollutants from industrial facilities contribute to the impairment of downstream waters and aquatic dependent wildlife. These contaminated discharges can and must be controlled for the ecosystem to regain its health.

Polluted discharges from concrete mixing facilities such as the Alpha Materials Facility contain pH affecting substances; metals, such as iron and aluminum; toxic metals, such as lead, zinc, cadmium, chromium, copper, arsenic, and mercury; chemical oxygen demand ("COD"); biological oxygen demand ("BOD"); total suspended solids ("TSS"); benzene; gasoline and diesel fuels; fuel additives; coolants; antifreeze; total kjeldahl nitrogen ("TKN"); trash; and oil and grease ("O&G"). Many of these pollutants are on the list of chemicals published by the State of California as known to cause cancer, birth defects, and/or developmental or reproductive harm. Discharges of polluted storm water to the Santa Ana River and its tributaries pose carcinogenic and reproductive toxicity threats to the public and adversely affect the aquatic environment.

The Alpha Materials Facility discharges into Reach 4 of the Santa Ana River ("Receiving Waters"), which is an ecologically sensitive area. Although pollution and habitat destruction have drastically diminished once-abundant and varied fisheries, these waters are still essential habitat for dozens of fish and bird species as well as macro-invertebrate and invertebrate species. Storm water and non-storm water contaminated with sediment, heavy metals, and other pollutants harm the special aesthetic and recreational significance that the Receiving Waters have for people in the surrounding communities. The public's use of local waterways exposes many people to toxic metals and other contaminants in storm water discharges. Non-contact recreational and aesthetic opportunities, such as wildlife observation, are also impaired by polluted discharges to the Receiving Waters.

The California Regional Water Quality Control Board, Santa Ana Region Regional Board ("Regional Board") issued the *Santa Ana River Basin Water Quality Control Plan* ("Basin Plan"). The Basin Plan identifies the "Beneficial Uses" of water bodies in the region. The Beneficial Uses for the Santa Ana River downstream of the point at which it receives storm water discharges from the Alpha Materials Facility (i.e., Santa Ana River Reaches 1-4) include: Agricultural Supply; Groundwater Recharge; Water Contact Recreation; Non-contact Water Recreation; Warm Freshwater Habitat; Wildlife Habitat; and Rare, Threatened or Endangered Species. See Basin Plan at Table 3-1. According to the 2010 303(d) List of Impaired Water Bodies, Reach 4 of the Santa Ana River is impaired for pathogens, Reach 3 is impaired for



copper and lead, and Reach 2 is impaired for indicator bacteria.<sup>3</sup> Polluted discharges from industrial sites, such as the Alpha Materials Facility, contribute to the degradation of these already impaired surface waters and aquatic-dependent wildlife that depends on these waters.

## **II. THE ALPHA MATERIALS FACILITY AND ASSOCIATED DISCHARGES OF POLLUTANTS**

### **A. The Alpha Materials Facility Site Description and Industrial Activities**

Information available to Waterkeeper indicates the Alpha Materials Facility is located near the intersection of 20<sup>th</sup> Street and Van Dell Road in Riverside, California 92509. The address for APN 178-020-026 is 6170 20<sup>th</sup> Street, Riverside, CA 90509-2031. The other parcel comprising Alpha Materials does not have a street address.

The Alpha Materials Facility is bordered by another ready-mixed concrete facility to the south. The NOI states that approximately 90% of the site is impervious.

The Alpha Materials Facility is a concrete mixing facility that produces ready-mixed concrete. Concrete is produced by mixing aggregate (sand, gravel, or crushed stone), cement (a fine powder), chemical additives, and water. As mentioned above, the Alpha Materials Facility may also produce cement. To make hydraulic cement, aluminum and silica from clay or shale and limestone are ground, mixed, heated, and fused in a rotary kiln, cooled, and reduced to a powder.

Information available to Waterkeeper indicates that the Alpha Materials Facility has a mechanics' shop, two unidentified buildings, a parking lot, several concrete trucks parked under cover, a diesel tank, a water tank, heavy equipment that moves the aggregate around the site, cement storage silos, lime storage silos, and fly ash silos.

Information available to Waterkeeper indicates Alpha Materials primary objective at the Facility is to store and deliver concrete, sand and gravel. Alpha Materials accomplishes this by maintaining at least one parcel primarily dedicated to raw material storage or stockpiling, and a second parcel dedicated to a batch plant, office space, employee parking, and loading/unloading of mixed concrete. The Alpha Materials Facility's industrial activities include, but are not limited to: fueling, repairing, and maintaining concrete transport vehicles and other Facility vehicles and equipment; storage of fuels and hazardous materials, such as diesel fuel, new vehicle fluids, and hazardous waste vehicle fluids; concrete truck parking; unloading of sand and gravel; storage of sand and gravel; storage of cement; storage of chemical additives; storage of fly ash, lime and cement; weighing sand, gravel, cement, and lime; cement mixing; mixing appropriate amounts of sand, gravel, and cement; process water; and vehicle washwater.

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<sup>3</sup> 2010 Integrated Report – All Assessed Waters, *available at* [http://www.waterboards.ca.gov/water\\_issues/programs/tmdl/integrated2010.shtml](http://www.waterboards.ca.gov/water_issues/programs/tmdl/integrated2010.shtml) (last accessed on April 4, 2015).

The Alpha Materials Facility also includes several outdoor storage piles of aggregate and ready-mixed concrete that are stored in three-walled, unroofed structures, as well as elevators or conveyor belts, elevated bins, and hoppers.

The industrial activities that occur at the Alpha Materials Facility involve: unloading trucks transporting sand and gravel; vehicle maintenance and storage; vehicle fueling; transporting raw materials across the site; raw and finished material storage; weighing aggregate and cement; mixing aggregate, water, and cement to form concrete; and loading trucks with concrete. Information available to Waterkeeper indicates that Alpha Materials' industrial activities regulated by the Storm Water Permit span more than the 9.75 acres identified by Alpha Materials and thus Alpha Materials has failed to obtain coverage for all required areas at the Facility.

#### **B. Alpha Materials' Industrial Activities**

The pollutants associated with operations at the Facility include, but are not limited to: pH affecting substances; metals, such as iron and aluminum; toxic metals, such as lead, zinc, cadmium, chromium, copper, arsenic, and mercury; COD; BOD; TSS; benzene; gasoline and diesel fuels; fuel additives; coolants; antifreeze; TKN; trash; and O&G.

Information available to Waterkeeper indicates Alpha Materials has not properly developed and/or implemented the required best management practices ("BMPs") to address pollutant sources and contaminated discharges. BMPs are necessary at the Alpha Materials Facility to prevent the exposure of pollutants to precipitation and the subsequent discharge of polluted storm water from the Facility during rain events. Consequently, during rain events storm water carries pollutants from the Facility's stockpile or material storage area(s), truck parking area(s), fueling and maintenance area(s), add-mix area(s), batch plant area(s), washing area(s), and other areas into the storm sewer system, which flows into the Receiving Waters, in violation of the Storm Water Permit.

Information available to Waterkeeper also indicates that concrete, particulates of sand, gravel, and cement have been and continue to be tracked from vehicle maintenance and equipment washing areas throughout the Facility. These pollutants accumulate at the sand and gravel storage areas and near the silos, the loading and unloading areas, and the driveways leading onto 20<sup>th</sup> Street. As a result, trucks and vehicles leaving the Facility via the driveways are pollutant sources tracking sediment, dirt, O&G, metal particles, and other pollutants off-site.

Information available to Waterkeeper indicates that raw materials are stored outside and weighing and mixing activities occur outside without adequate cover or containment resulting in discharges of polluted storm water. Additionally, metal parts and hazardous materials associated with maintenance, fueling, and washing of the concrete trucks occur outside without secondary containment or other measures to prevent polluted storm water and prohibited non-storm water discharges from discharging from the Alpha Materials Facility. These activities are all significant pollutant sources at the Facility.

Alpha Materials' failure to develop and/or implement required BMPs also results in prohibited discharges of non-storm water in violation of the Storm Water Permit and the Clean Water Act. Information available to Waterkeeper indicates that Alpha Materials discharges process waters from equipment washing and other activities as part of its industrial operations. These illegal discharges of polluted storm and non-storm water negatively impact Waterkeeper's members' use and enjoyment of the Receiving Waters by degrading the quality of the Receiving Waters and by posing risks to human health and aquatic life.

**C. Alpha Materials Facility Storm Water Flow and Discharge Locations**

Storm water polluted by Alpha Materials' industrial operations is discharged to Receiving Waters via three discharge points located throughout the Facility. Information available to Waterkeeper indicates that the first and second discharge points are the two driveways and the third is near a truck parking area and the silos. Information available to Waterkeeper indicates that the third discharge point is a storm water conveyance channel that goes under the Facility's fence, under the sidewalk on 20<sup>th</sup> Street, and into the Riverside County storm drain system on 20<sup>th</sup> Street.

Storm water originating from APN 175-160-011 drains through a swale northeasterly toward 20<sup>th</sup> Street. Once discharged to 20<sup>th</sup> Street, the storm water reaches a storm drain inlet and into the storm drain system. From the Riverside County storm drain system, storm water enters Reach 4 of the Santa Ana River.

**III. VIOLATIONS OF THE CLEAN WATER ACT AND THE STORM WATER PERMIT**

In California, any person who discharges storm water associated with industrial activity must comply with the terms of the Storm Water Permit in order to lawfully discharge pollutants. *See* 33 U.S.C. §§ 1311(a), 1342; 40 C.F.R. § 122.26(c)(1); *see also* Storm Water Permit, Fact Sheet at VII.

Between 1997 and June 30, 2015, the Storm Water Permit in effect was Order No. 97-03-DWQ, which Waterkeeper refers to as the "Storm Water Permit." On July 1, 2015, pursuant to Order No. 2015-0057-DWQ the Storm Water Permit was reissued, and, as explained below, includes the same fundamental terms as the prior permit. For purposes of this Notice Letter, Waterkeeper refers to the reissued permit as the "2015 Permit."

**A. Discharges of Pollutants Not in Compliance with an NPDES Permit in Violation of Section 301(a) of the Clean Water Act**

The Clean Water Act requires that any person discharging pollutants to a water of the United States from a point source<sup>4</sup> obtain coverage under an NPDES permit. *See* 33 U.S.C.

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<sup>4</sup> A point source is defined as any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling



§§ 1311(a), 1342; 40 CFR § 122.26(c)(1). The Storm Water Permit is an NPDES permit which regulates storm water discharges associated with certain industrial activities. The Alpha Materials Facility Owners and/or Operators discharge pollutants from point sources at the Facility to waters of the United States without NPDES permit coverage in violation of Section 301(a) of the Clean Water Act.

In California, industrial dischargers not covered under an individual NPDES permit must comply with the terms of the Storm Water Permit to lawfully discharge storm water associated with industrial activity. *See id.*; *see also* Storm Water Permit, Fact Sheet p. VII; 2015 Permit, Fact Sheet, p. 9. Industrial activities conducted at the Alpha Materials Facility fall under 40 C.F.R. Chapter I, Subchapter N and SIC codes 3531, 3255, and 3297, which require Alpha Materials to obtain Storm Water Permit coverage for the entire Facility. Information available to Waterkeeper indicates that Alpha Materials has failed to obtain Storm Water Permit coverage for all regulated industrial operations conducted at the Facility.<sup>5</sup> Specifically, Alpha Materials stores raw materials and mixes cement or concrete throughout the Facility, on the 9.75 acre parcel as well as the 3.84 acre parcel that does not have NPDES permit coverage. The Alpha Materials Facility Owners and/or Operators discharge storm water associated with industrial activities without Storm Water Permit coverage in violation of the Storm Water Permit.

Every day Alpha Materials Owners and/or Operators conducts industrial activities without NPDES permit coverage is a separate and distinct violation of the Clean Water Act and the Storm Water Permit. Alpha Materials has been and continues to be in daily violation of the requirement to obtain and comply with a Clean Water Act NPDES permit every day since beginning operations. These violations are ongoing, and Waterkeeper will include additional violations when additional information and data become available. Alpha Materials Owners and/or Operators are subject to civil penalties for all violations of the Clean Water Act occurring since August 10, 2010.

**B. Unauthorized Non-Storm Water Discharges from the Alpha Materials Facility in Violation of Discharge Prohibition A(1) of the Storm Water Permit**

Except as authorized by Special Conditions D(1) of the Storm Water Permit, Discharge Prohibition A(1) prohibits permittees from discharging materials other than storm water (non-storm water discharges) either directly or indirectly to waters of the United States. The 2015 Permit includes the same discharge prohibition. *See* 2015 Permit, Discharge Prohibition III.B. Prohibited non-storm water discharges must be either eliminated or permitted by a separate NPDES permit. *See* Storm Water Permit, Discharge Prohibition A(1); *see also* 2015 Permit, Discharge Prohibition III.B.

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stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. 33 U.S.C. § 1362(14); *see* 40 C.F.R. § 122.2

<sup>5</sup> If Alpha Materials claims it has Storm Water Permit coverage for all of its regulated activities at the Facility, Waterkeeper puts Alpha Materials on notice that it is in violation of the Storm Water Permit as set forth herein.



Information available to Waterkeeper indicates that unauthorized non-storm water discharges occur at the Facility due to inadequate BMP development and/or implementation necessary to prevent these discharges. For example, unauthorized non-storm water discharges occur at the Facility from the Facility's sedimentation watering system and/or when truck washing and cleaning activities occur. The Alpha Materials Facility Owners and/or Operators conduct these activities without BMPs to prevent related non-storm water discharges. Non-storm water discharges resulting from dust control and/or washing and cleaning are not from sources that are listed among the authorized non-storm water discharges in Special Conditions D(1) of the Storm Water Permit and thus are always prohibited under the Storm Water Permit.

Waterkeeper puts the Alpha Materials Facility Owner and/or Operator on notice that Discharge Prohibition A(1) of the Storm Water Permit is violated each time non-storm water is discharged from the Alpha Materials Facility. These discharge violations are ongoing and will continue until the Alpha Materials Facility Owners and/or Operators develop and implement BMPs that prevent prohibited non-storm water discharges or obtains separate NPDES permit coverage. Further, given that the Alpha Materials Owner and/or Operator's non-storm water discharge violations are ongoing, Waterkeeper also puts the Alpha Materials Owner and/or Operator on notice that Discharge Prohibition III.B. of the 2015 Permit is violated each time non-storm water is discharged from the Alpha Materials Facility after July 1, 2015. Each time the Alpha Materials Facility Owner and/or Operator discharges prohibited non-storm water in violation of Discharge Prohibition A(1) of the Storm Water Permit and Discharge Prohibition III.B. of the 2015 Permit is a separate and distinct violation of the Storm Water Permit and section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a). Waterkeeper will update the number and dates of violations when additional information becomes available. The Alpha Materials Facility Owner and/or Operator is subject to civil penalties for all violations of the Clean Water Act occurring since August 10, 2010.

**C. Discharges of Polluted Storm Water from the Alpha Materials Facility in Violation of Effluent Limitation B(1)**

Effluent Limitation B(1) of the Storm Water Permit states that storm water discharges from facilities subject to the effluent limitations in 40 C.F.R. Subchapter N shall not exceed the specified effluent limitations. The 2015 Permit includes the same effluent limitation. *See* 2015 Permit, Effluent Limitation V.B. For facilities categorized under 40 C.F.R. Subchapter N, compliance with the effluent limitation guidelines constitutes compliance with best available technology economically achievable ("BAT") and best conventional pollutant control technology ("BCT") for the specified pollutants and must be met to comply with the Storm Water Permit. *See* Storm Water Permit, Fact Sheet at VIII; *see also* 2015 Permit, Fact Sheet at pp. 15-17.

Alpha Materials' Owners and/or Operators NOI dated August 11, 2008, identifies the Facility as engaged in cement manufacturing. Cement manufacturing facilities are subject to the effluent limitations found in 40 C.F.R. Part 411. In relevant part, facilities that experience runoff from the storage of raw materials, intermediate products, or finished products from a cement manufacturing facility are subject to effluent limitations in 40 C.F.R. Part 411, Subpart C. *See* 40 C.F.R. § 411.30. As Alpha Materials has identified, and information available to Waterkeeper

indicates that, cement manufacturing and/or the storage of materials used in or derived from cement manufacturing are industrial activities at the Alpha Materials Facility, storm water discharges from the Facility are required to comply with federal effluent limitations at 40 C.F.R. § 411.30 *et seq.* ("Federal Effluent Limitations"). The parameters regulated under 40 C.F.R. Part 411 include: TSS and pH. *See* 40 C.F.R. §§ 411.17, 411.22, 411.37.

Storm water sampling at the Facility demonstrates that storm water discharges contain concentrations of pollutants above the applicable Federal Effluent Limits. The effluent limitation based upon BPT and BAT for TSS is 50 mg/L and for pH is a range of 6-9 s.u.. Three samples collected by Waterkeeper showed exceedances of the Federal Effluent Limitation for TSS by a magnitude of 1.8, 3.9, and 10. *See* Exhibit A. Two samples collected by Waterkeeper were above the Federal Effluent Limitation range for pH by 2.4 s.u. *See id.*

Information available to Waterkeeper indicates that the Alpha Materials Facility Owners and/or Operators violate Effluent Limitation B(1) of the Storm Water Permit by discharging storm water containing pollutants in excess of, or outside the range of, the Federal Effluent Limitations each time Alpha Materials discharges storm water from the Facility. *See, e.g.,* Exhibit B. These discharge violations are ongoing and will continue every day the Alpha Materials Owner and/or Operator discharge storm water from the Facility that contains concentrations of pollutants in excess of, or outside the range of, the Federal Effluent Limitations. Waterkeeper will include additional violations as information and data become available. Further, given that the Alpha Materials Owner and/or effluent limitation violations are ongoing, Waterkeeper also puts the Alpha Materials Owner and/or Operator on notice that Effluent Limitation V.B. of the 2015 Permit is violated each time storm water is discharged from the Alpha Materials Facility after July 1, 2015. Each time the Alpha Materials Facility Owner and/or Operator discharge polluted storm water in violation of Effluent Limitation B(3) of the Storm Water Permit and Effluent Limitation V.B. of the 2015 Permit is a separate and distinct violation of the Storm Water Permit and Section 301(a) of the Clean Water Act, 33 U.S.C. §1311(a). The Alpha Material Facility Owner and/or Operator is subject to civil penalties for all violations of the Clean Water Act occurring since August 10, 2010.

**D. Discharges of Polluted Storm Water from the Alpha Materials Facility in Violation of Effluent Limitation B(3) of the Storm Water Permit**

Effluent Limitation B(3) requires dischargers to reduce or prevent pollutants associated with industrial activity in storm water discharges through implementation of BMPs that achieve BAT for toxic<sup>6</sup> and non-conventional pollutants and BCT for conventional pollutants.<sup>7</sup> Storm Water Permit, Effluent Limitation B(3). The 2015 Permit includes the same effluent limitation. *See* 2015 Permit, Effluent Limitation V.A. The Federal Effluent Limitations define application of BAT for TSS and pH as numeric effluent limitations. A discharge of storm water which exceeds

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<sup>6</sup> Toxic pollutants are listed at 40 C.F.R. § 401.15 and include copper, lead, and zinc, among others.

<sup>7</sup> Conventional pollutants are listed at 40 C.F.R. § 401.16 and include biochemical oxygen demand, TSS, oil and grease, pH, and fecal coliform.

the Federal Effluent Limitations is a failure to achieve BAT/BCT as required by Effluent Limitation B(3) of the Storm Water Permit and V.B. of the 2015 Permit. Further, EPA Benchmarks are relevant and objective standards for evaluating whether a permittee's BMPs achieve compliance with BAT/BCT standards as required by Effluent Limitation B(3) and Effluent Limitation V.A.<sup>8</sup>

Information available to Waterkeeper demonstrates that the Alpha Materials Owners and/or Operators have failed and continue to fail to develop and/or implement BMPs at the Facility that achieve compliance with the BAT/BCT standards. Consistent with Alpha Materials' lack of adequate BMPs, the analytical results of storm water sampling at the Facility demonstrates the Alpha Materials Facility Owner and/or Operator has failed and continues to fail to implement BAT/BCT. Specifically, analysis of discharges from the Alpha Materials Facility demonstrates that storm water discharges from the Facility consistently contain concentrations of pollutants above the Federal Effluent Limitations and EPA Benchmarks. *See, e.g.,* Exhibit A. For example, the Federal Effluent Limitation for TSS is 50 mg/L and the EPA Benchmark 100 mg/L. A storm water sample that Waterkeeper collected from the Facility in January 2015 exceeded the Federal Effluent Limitation by ten (10) times and the EPA Benchmark by five (5) times. The Federal Effluent Limitation and EPA Benchmark for pH are 6.0 – 9.0 s.u. Storm water samples taken from the Facility by Waterkeeper between December 2014 and January 2015 show two (2) samples outside this benchmark range, with a high pH level of 11.4 s.u., 2.4 s.u. more than the maximum Federal Effluent Limitation and EPA Benchmark level.

Storm water samples taken from the Facility by Waterkeeper between December 2014 and January 2015 show additional exceedances of the EPA Benchmark levels for heavy metals. The exceedances of EPA Benchmark levels recorded thus far include aluminum by magnitudes of 1.9, 3.6, and 11 and iron by magnitudes of 1.9, 3.4, and 11. The repeated and significant exceedances of EPA Benchmarks demonstrate that Alpha Materials Owner and/or Operator have failed to develop and/or implement required BMPs at the Facility that achieve compliance with the BAT/BCT standards.

Information available to Waterkeeper indicates that the Alpha Materials Facility Owners and/or Operators violate Effluent Limitation B(3) of the Storm Water Permit for failing to develop and/or implement BMPs that achieve BAT/BCT each time Alpha Materials discharges storm water from the Facility. *See, e.g.,* Exhibit B. These discharge violations are ongoing and will continue every time Alpha Materials discharges polluted storm water without developing and/or implementing BMPs that achieve compliance with the BAT/BCT standards. Waterkeeper will update the dates of violations when additional information and data become available. Further, given that the Alpha Materials Owner and/or effluent limitation violations are ongoing, Waterkeeper also puts the Alpha Materials Owner and/or Operator on notice that Effluent

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<sup>8</sup> *See United States Environmental Protection Agency (EPA) National Pollutant Discharge Elimination System (NPDES) Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity (MSGP) Authorization to Discharge Under the National Pollutant Discharge Elimination System*, as modified effective February 26, 2009 ("Multi-Sector Permit"), Fact Sheet at 106; *see also*, 65 Federal Register 64839 (2000).



Limitation V.A. of the 2015 Permit is violated each time storm water is discharged from the Alpha Materials Facility after July 1, 2015. Each time Alpha Materials discharges polluted storm water in violation of Effluent Limitation B(3) of the Storm Water Permit and Effluent Limitation V.A. of the 2015 Permit is a separate and distinct violation of the Storm Water Permit and Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a). The Alpha Materials Facility Owner and/or Operator is subject to civil penalties for all violations of the Clean Water Act occurring since August 10, 2010.

**E. Discharges of Polluted Storm Water from the Alpha Materials Facility in Violation of Receiving Water Limitations C(1) and C(2) of the Storm Water Permit**

Receiving Water Limitation C(2) prohibits storm water discharges and authorized non-storm water discharges that cause or contribute to an exceedance of an applicable Water Quality Standard ("WQS").<sup>9</sup> The 2015 Permit includes the same receiving water limitation. *See* 2015 Permit, Receiving Water Limitation VI.A. Discharges that contain pollutants in excess of an applicable WQS violate Receiving Water Limitation C(2) of the Storm Water Permit, Receiving Water Limitation VI.A. of the 2015 Permit, and the Clean Water Act.

Receiving Water Limitation C(1) prohibits storm water discharges and authorized non-storm water discharges to surface water that adversely impact human health or the environment. Storm Water Permit, Receiving Water Limitation C(1). The 2015 Permit includes the same receiving water limitation. *See* 2015 Permit, Receiving Water Limitation VI.B. Discharges that contain pollutants in concentrations that exceed levels known to adversely impact aquatic species and the environment constitute violations of Receiving Water Limitation C(1) of the Storm Water Permit, Receiving Water Limitation VI.B. of the 2015 Permit, and the Clean Water Act.

Storm water sampling at the Alpha Materials Facility demonstrates that discharges contain concentrations of pollutants that cause or contribute to a violation of an applicable WQS. For example, the WQS from the Basin Plan for pH is 6.5-8.5 s.u., and one of the pH samples of the storm water discharged from the Facility on November 8, 2011 measured 11.4 s.u., 2.9 s.u. above the maximum pH WQS. These exceedances of WQS demonstrate that Alpha Materials has violated and continues to violate Receiving Water Limitation C(2) of the Storm Water Permit, and Receiving Water Limitation VI.A. of the 2015 Permit.

As explained herein, the Receiving Waters are impaired, and thus unable to support the designated beneficial uses, for some of the same pollutants discharging from the Alpha Materials Facility. The 2010 303(d) List of Impaired Water Bodies lists the Santa Ana River as impaired

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<sup>9</sup> The Basin Plan designates Beneficial Uses for the Receiving Waters. Water quality standards are pollutant concentration levels determined by the state or federal agencies to be protective of designated Beneficial Uses. Discharges above water quality standards contribute to impairment of Receiving Waters' Beneficial Uses. Applicable water quality standards include, among others, the Criteria for Priority Toxic Pollutants in the State of California, 40 C.F.R. § 131.38 ("CTR"), and water quality objectives in the Basin Plan.



for multiple pollutants. Information available to Waterkeeper indicates that the Alpha Materials Facility's storm water discharges contain elevated concentrations of pollutants, such as aluminum, iron and pH, which can be acutely toxic and/or have sub-lethal impacts on the avian and aquatic wildlife in the Santa Ana River. *See* Exhibit A. Discharges of elevated concentrations of pollutants in the storm water from the Alpha Materials Facility also adversely impact human health. These harmful discharges from the Alpha Materials Facility are violations of Receiving Water Limitation C(1) of the Storm Water Permit and Receiving Water Limitation VI.B. of the 2015 Permit.

Waterkeeper puts Alpha Materials Facility Owner and/or Operator on notice that Receiving Water Limitation C(1) and/or (2) of the Storm Water Permit are violated each time polluted storm water discharges from the Alpha Materials Facility. *See, e.g.*, Exhibit B. These discharge violations are ongoing and will continue every time contaminated storm water is discharged in violation of Receiving Water Limitation C(1) and/or C(2) of the Storm Water Permit. Further, given that the Alpha Materials Owner and/or receiving water limitations violations are ongoing, Waterkeeper also puts the Alpha Materials Owner and/or Operator on notice that Receiving Water Limitations VI.A. and VI.B. of the 2015 Permit are violated each time storm water is discharged from the Alpha Materials Facility after July 1, 2015. Each time discharges of storm water from the Facility cause or contribute to a violation of an applicable WQS is a separate and distinct violation of Receiving Water Limitation C(1) of the Storm Water Permit, Receiving Water Limitation VI.A. of the 2015 Permit VI.A, and Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a). Each time discharges from the Facility adversely impact human health or the environment is a separate and distinct violation of Receiving Water Limitation C(2) of the Storm Water Permit, Receiving Water Limitation VI.B. of the 2015 Permit, and Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a). Waterkeeper will update the dates of violation when additional information and data becomes available. Alpha Materials Facility Owner and/or Operator is subject to civil penalties for all violations of the Clean Water Act occurring since August 10, 2010.

**F. Failure to Develop, Implement, and/or Revise an Adequate Storm Water Pollution Prevention Plan**

Section A(1) and Provision E(2) of the Storm Water Permit require dischargers to have developed and implemented a SWPPP by October 1, 1992, or prior to beginning industrial activities, that meets all of the requirements of the Storm Water Permit. The objectives of the SWPPP requirement are to identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm water discharges from the Alpha Materials Facility, and to implement site-specific BMPs to reduce or prevent pollutants associated with industrial activities in storm water discharges. *See* Storm Water Permit, Section A(2). These BMPs must achieve compliance with the Storm Water Permit's Effluent Limitations and Receiving Water Limitations. To ensure compliance with the Storm Water Permit, the SWPPP must be evaluated on an annual basis pursuant to the requirements of Section A(9), and must be revised as necessary to ensure compliance with the Storm Water Permit. *Id.*, Sections A(9) and (10). The 2015 Permit includes the same SWPPP requirements and objectives. *See* 2015 Permit, Section X.A.-C.

Sections A(3) – A(10) of the Storm Water Permit set forth the requirements for a SWPPP. Among other requirements, the SWPPP must include: a site map showing the facility boundaries, storm water drainage areas with flow patterns, nearby water bodies, the location of the storm water collection, conveyance and discharge system, structural control measures, areas of actual and potential pollutant contact, areas of industrial activity, and other features of the facility and its industrial activities (*see* Storm Water Permit, Section A(4)); a list of significant materials handled and stored at the site (*see* Storm Water Permit, Section A(5)); a description of potential pollutant sources, including industrial processes, material handling and storage areas, dust and particulate generating activities, significant spills and leaks, non-storm water discharges and their sources, and locations where soil erosion may occur (*see* Storm Water Permit, Section A(6)). Sections A(7) and A(8) of the Storm Water Permit require an assessment of potential pollutant sources at the facility and a description of the BMPs to be implemented at the facility that will reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges, including structural BMPs where non-structural BMPs are not effective. The 2015 Permit includes the same SWPPP requirements and objectives. *See* 2015 Permit, Section X.D.-H.

Information available to Waterkeeper indicates that the Alpha Materials Facility Owner and/or Operator has been and continues to conduct operations at the Facility with an inadequately developed and/or implemented SWPPP. For example, the SWPPP site map for the Alpha Materials Facility does not include all of the information required by Section A(4) of the Storm Water Permit, such as the Facility boundaries, an outline of all storm water drainage areas within the Facility boundaries, portions of the drainage area impacted by run-on from surrounding area, areas of soil erosion, nearby water bodies, the location of the storm water collection and conveyance system, discharge locations, structural control measures that affect storm water discharges, an outline of all impervious areas of the Facility, locations where materials are directly exposed to precipitation, or all areas of industrial activity.

The Alpha Materials Facility Owner and/or Operator has also failed to revise the Facility's SWPPP to ensure compliance with the Storm Water Permit. Despite the significant concentrations of pollutants in the Facility's storm water discharges every year since at least the 2009-2010 Wet Season,<sup>10</sup> the Facility's current SWPPP is dated September 4, 2008, and therefore was never revised to include additional BMPs to eliminate or reduce these pollutants, as required by the Storm Water Permit.

Further, information available to Waterkeeper indicates that the Alpha Materials Facility Owner and/or Operator failed to comply with the SWPPP requirements of the 2015 Permit. In email correspondence between the Alpha Materials Owner and/or Operator between April 6, 2015 and July 17, 2015, the Regional Board informed the Alpha Materials Owner and/or Operator that as of July 17 the following information was missing from the Facility SWPPP: (1) Worksheet 3-list of significant materials that may come into contact with storm water, (2) Table 1-types of pollutants and sources of pollutants, (3) Table 2-table showing individuals responsible for implementing BMPs, and (4) erosion control plans showing facility layout.

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<sup>10</sup> The Storm Water Permit defines the Wet Season as October 1 – May 30.

The Alpha Materials Facility Owner and/or Operator has failed to adequately develop, implement, and/or revise a SWPPP, in violation of Section A and Provision E(2) of the Storm Water Permit. Every day the Alpha Materials Facility operates with an inadequately developed, implemented, and/or properly revised SWPPP is a separate and distinct violation of the Storm Water Permit and the Clean Water Act. The Alpha Materials Facility Owner and/or Operator have been in daily and continuous violation of the Storm Water Permit's SWPPP requirements since at least August 10, 2010. These violations are ongoing, and Waterkeeper will include additional violations when information becomes available, including specifically any additional violations of the SWPPP provisions of the 2015 Permit beginning August 14, 2015. The Alpha Materials Facility Owners and/or Operators are subject to civil penalties for all violations of the Clean Water Act occurring since August 10, 2010.

**G. Failure to Develop, Implement, and/or Revise an Adequate Monitoring and Reporting Program**

Section B(1) and Provision E(3) of the Storm Water Permit require facility operators to develop and implement an adequate Monitoring and Reporting Program ("M&RP") by October 1, 1992, or prior to the commencement of industrial activities at a facility, that meets all of the requirements of the Storm Water Permit. The primary objective of the M&RP is to detect and measure the concentrations of pollutants in a facility's discharge to ensure compliance with the Storm Water Permit's Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations. *See* Storm Water Permit, Section B(2). The M&RP must therefore ensure that BMPs are effectively reducing and/or eliminating pollutants at the facility, and must be evaluated and revised whenever appropriate to ensure compliance with the Storm Water Permit. *Id.*

Sections B(3) – B(16) of the Storm Water Permit set forth the M&RP requirements. Specifically, Section B(3) requires dischargers to conduct quarterly visual observations of all drainage areas within their facility for the presence of authorized and unauthorized non-storm water discharges. Section B(4) requires dischargers to conduct visual observations of storm water discharges from one storm event per month during the Wet Season. Sections B(3) and B(4) further require dischargers to document the presence of any floating or suspended material, oil and grease, discolorations, turbidity, odor, and the source of any pollutants. Dischargers must maintain records of observations, observation dates, locations observed, and responses taken to eliminate unauthorized non-storm water discharges and to reduce or prevent pollutants from contacting non-storm water and storm water discharges. *See* Storm Water Permit, Sections B(3) and B(4). Dischargers must revise the SWPPP in response to these observations to ensure that BMPs are effectively reducing and/or eliminating pollutants at the facility. *Id.*, Section B(4).

Sections B(5) and B(7) of the Storm Water Permit require dischargers to visually observe and collect samples of storm water from all locations where storm water is discharged. Under Section B(5) of the Storm Water Permit, the facility owners and/or operators are required to collect at least two (2) samples from each discharge location at their facility during the Wet Season. Storm water samples must be analyzed for TSS, pH, specific conductance ("SC"), total organic carbon or O&G, and other pollutants that are likely to be present in the facility's



discharges in significant quantities. *See* Storm Water Permit, Section B(5)(c). The Storm Water Permit requires facilities classified as SIC codes 3255 and 3297, such as the Alpha Materials Facility, to also analyze storm water samples for aluminum. *Id.*; *see also* Storm Water Permit, Table D, Sector E.

Section B(7)(d) of the Storm Water Permit allows for the reduction of sampling locations in very limited circumstances when “industrial activities and BMPs within two or more drainage areas are substantially identical.” If a discharger seeks to reduce sampling locations, the “[f]acility operators must document such a determination in the annual report.” *Id.*

The Alpha Materials Facility Owner and/or Operator has been conducting operations at the Alpha Materials Facility with an inadequately developed, implemented, and/or revised M&RP. For example, the Alpha Materials Facility Owner and/or Operator failed to conduct all required quarterly visual observations of unauthorized discharges, in violation of Section B(3) of the Storm Water Permit. Additionally, the Alpha Materials Facility Owner and/or Operator failed to provide the records required by Section B(4) of the Storm Water Permit for the monthly visual observations of storm water discharges. The Storm Water Permit further requires dischargers to document the presence of any floating and suspended material, O&G, discolorations, turbidity, odor and the source of any pollutants. Storm Water Permit, Section B(4)(c). Dischargers must document and maintain records of observations, observation dates, locations observed, and responses taken to reduce or prevent pollutants in storm water discharges. *Id.*

Based on information available to Waterkeeper, the Alpha Materials Owner and/or Operator consistently failed to properly conduct and/or document the required observations of storm water discharges within the first hour of discharge, from all discharge locations, and/or from one qualifying storm event per month. The Alpha Materials Owner and/or Operator also failed to properly document and maintain records of observations and/or responses taken to reduce or prevent pollutants in storm water discharges as evidenced by the retention of records, including inspection dates, otherwise required to be submitted with Annual Reports.

The Alpha Materials Facility Owner and/or Operator also failed to collect and analyze storm water samples as required by the Storm Water Permit. The Storm Water Permit requires permittees to collect storm water samples during the first hour of discharge from (1) the first storm event of the wet season, and (2) at least one other storm event in the wet season. Storm Water Permit, Section B(5)(a). All discharge locations must be sampled. *Id.* Sample collection is only required of storm water discharges that occur during scheduled facility operating hours and that are preceded by at least three working days without storm water discharge. Storm Water Permit, Section B(5)(b). The Alpha Materials Owner and/or Operator consistently failed to collect the required storm water samples in violation of the Storm Water Permit's M&RP requirements. For example, the Owner and/or Operator failed to collect storm water samples during the 2010-2011 through 2013-2014 wet seasons, despite the occurrence of qualifying rain events.<sup>11</sup> *See* Exhibit B. Furthermore, the Alpha Materials Owner and/or Operator were informed

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<sup>11</sup> As of the date of this letter, the State Water Resources Control Board's maintained Storm Water Multiple Application & Report Tracking System (SMARTS) does not have a record of the



by Regional Water Quality Control Board staff in 2012 and 2013 to sample storm water discharges even if the collection occurred after the first hour of discharge. Alpha Materials Owners and/or Operators have continued to state there were no qualifying storm events in each Annual Report subsequent to 2012.

Finally, facilities subject to Federal storm water effluent limitation guidelines, such as Alpha Materials, have additional monitoring and reporting requirements beyond those detailed in Section B(5). The Storm Water Permit requires permittees to collect and analyze two samples for any pollutant specific in the appropriate category of 40 C.F.R. Subchapter N; estimate or calculate the volume of storm water discharges from each drainage area; estimate or calculate the mass of each regulated pollutant as defined in the appropriate category of 40 C.F.R. Subchapter N; and identify the individual(s) performing the estimates or calculations in accordance with the estimates or calculations. Storm Water Permit, Section B(6). The Cement Manufacturing Point Source Category provides effluent limitation guidelines representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology for TSS and pH. 40 C.F.R. § 411.37. The Alpha Materials Owner's and/or Operator's failure to comply with the additional monitoring and reporting requirements of the Alpha Materials Facility is a violation of the Storm Water Permit.

The Alpha Materials Facility Owner's and/or Operator's failure to conduct sampling and monitoring as required by the Storm Water Permit demonstrates that it has failed to develop, implement, and/or revise an M&RP that complies with the requirements of Section B and Provision E(3) of the Storm Water Permit. Every day that the Alpha Materials Facility Owners and/or Operators conduct operations in violation of the specific monitoring requirements of the Storm Water Permit, or with an inadequately developed and/or implemented M&RP, is a separate and distinct violation of the Storm Water Permit and the Clean Water Act. The Alpha Materials Facility Owner and/or Operators has been in daily and continuous violation of the Storm Water Permit's M&RP requirements every day since at least 2010. These violations are ongoing, and Waterkeeper will include additional violations when information becomes available, including specifically violations of the 2015 Permit monitoring requirements (*see* 2015 Permit, Section XI.). The Alpha Materials Facility Owners and/or Operators is subject to civil penalties for all violations of the Clean Water Act occurring since 2010.

#### **H. Failure to Comply with the Storm Water Permit's Reporting Requirements**

Section B(14) of the Storm Water Permit requires a permittee to submit an Annual Report to the Regional Board by July 1 of each year. Section B(14) requires that the Annual Report include a summary of visual observations and sampling results, an evaluation of the visual observation and sampling results, the laboratory reports of sample analysis, the annual comprehensive site compliance evaluation report, an explanation of why a permittee did not implement any activities required, and other information specified in Section B(13). The 2015 Permit includes the same annual reporting requirement. *See* 2015 Permit, Section XVI.

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2014-2015 Annual Report for the Alpha Materials facility. The allegations made in this letter may be updated following Waterkeeper's receipt of the 2014-2015 Annual Report.

The Alpha Materials Facility Owner and/or Operator has failed and continues to fail to submit Annual Reports that comply with the Storm Water Permit reporting requirements. For example, in each Annual Report since the filing of the 2010-2011 Annual Report, the Alpha Materials Facility Owner and/or Operator certified that: (1) a complete Annual Comprehensive Site Compliance Evaluation was done pursuant to Section A(9) of the Storm Water Permit; (2) the SWPPP's BMPs address existing potential pollutant sources; and (3) the SWPPP complies with the Storm Water Permit, or will otherwise be revised to achieve compliance. However, information available to Waterkeeper indicates that these certifications are erroneous. For example, as discussed above, storm water samples collected from the Facility have always contained concentrations of pollutants above Benchmark Levels, thus demonstrating that the SWPPP's BMPs have never adequately addressed existing potential pollutant sources. Further, the Facility's SWPPP does not include many elements required by the Storm Water Permit, and thus it is erroneous to certify that the SWPPP complies with the Storm Water Permit.

The Alpha Materials Facility Owner and/or Operator have also submitted incomplete Annual Reports. For instance, none of the Annual Reports have included an evaluation of the visual observation and sampling and analysis results, in violation of Section B(14) of the Storm Water Permit. In addition, the facility operator must report any noncompliance with the Storm Water Permit at the time that the Annual Report is submitted, including 1) a description of the noncompliance and its cause, 2) the period of noncompliance, 3) if the noncompliance has not been corrected, the anticipated time it is expected to continue, and 4) steps taken or planned to reduce and prevent recurrence of the noncompliance. Storm Water Permit, Section C(11)(d). The Alpha Materials Facility Owner and/or Operator did not report its non-compliance as required.

Finally, the Storm Water Permit requires a permittee whose discharges violate the Storm Water Permit Receiving Water Limitations to submit a written report identifying what additional BMPs will be implemented to achieve water quality standards, along with an implementation schedule. Storm Water Permit, Receiving Water Limitations C(3) and C(4). Information available to Waterkeeper indicates that the Alpha Materials Facility Owners and/or Operators failed to submit the reports required by Receiving Water Limitations C(3) and C(4) of the Storm Water Permit. As such, the Alpha Materials Facility Owners and/or Operators are in daily violation of this requirement of the Storm Water Permit.

Information available to Waterkeeper indicates that the Alpha Materials Facility Owner and/or Operator has submitted incomplete and/or incorrect Annual Reports that fail to comply with the Storm Water Permit. As such, the Alpha Materials Facility Owner and/or Operator is in daily violation of the Storm Water Permit. Every day the Alpha Materials Facility Owners and/or Operators conducts operations at the Facility without reporting as required by the Storm Water Permit is a separate and distinct violation of the Storm Water Permit and Section 301(a) of the Clean Water Act, 33 U.S.C. §1311(a). The Alpha Materials Facility Owner and/or Operator has been in daily and continuous violation of the Storm Water Permit's reporting requirements every day since at least August 10, 2010. These violations are ongoing, and Waterkeeper will include additional violations when information becomes available, including specifically violations of the 2015 Permit reporting requirements (*see* 2015 Permit, Section XVI.). The Alpha Materials

Facility Owner and/or Operator is subject to civil penalties for all violations of the Clean Water Act occurring since August 10, 2010.

#### **IV. RELIEF SOUGHT FOR VIOLATIONS OF THE CLEAN WATER ACT**

Pursuant to Section 309(d) of the Clean Water Act, 33 U.S.C. § 1319(d), and the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. § 19.4, each separate violation of the Clean Water Act subjects the violator to a penalty for all violations occurring during the period commencing five years prior to the date of the Notice Letter. These provisions of law authorize civil penalties of up to \$37,500 per day per violation for all Clean Water Act violations after January 12, 2009. In addition to civil penalties, Waterkeeper will seek injunctive relief preventing further violations of the Clean Water Act pursuant to Sections 505(a) and (d), 33 U.S.C. § 1365(a) and (d), declaratory relief, and such other relief as permitted by law. Lastly, pursuant to Section 505(d) of the Clean Water Act, 33 U.S.C. § 1365(d), Waterkeeper will seek to recover its costs, including attorneys' and experts' fees, associated with this enforcement action.

#### **V. CONCLUSION**

Waterkeeper is willing to discuss effective remedies for the violations described in this Notice Letter. However, upon expiration of the 60-day notice period, Waterkeeper will file a citizen suit under Section 505(a) of the Clean Water Act for Alpha Materials' violations of the Storm Water Permit.

If you wish to pursue settlement discussions please contact Waterkeeper's legal counsel:

Inland Empire Waterkeeper  
ATTN: Colin A. Kelly  
3151 Airway Ave., Suite F-110  
Costa Mesa, CA 92626  
Tel: (714) 850-1965 ext. 307

Sincerely,



Colin Kelly  
Staff Attorney  
Inland Empire Waterkeeper  
Orange County Coastkeeper



## Inland Empire Waterkeeper

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### SERVICE LIST

#### VIA U.S. CERTIFIED MAIL

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Kurt Berchtold  
Executive Officer  
Santa Ana Regional Water Quality Control Board  
3737 Main Street, Suite 500  
Riverside, California 92501



## Alpha Materials Notice of Intent Exhibit A

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### 1. Sampling Conducted by Waterkeeper Demonstrating Noncompliance with BAT/BCT

Date of Sample	Constituent	EPA Benchmark Limit (mg/L)	Alpha Materials' Sample Value (mg/L)	Magnitude of Exceedance
12/2/2014	Aluminum	0.75	1.9	2.5
12/2/2014	Iron	1	1.9	1.9
12/12/2014	Aluminum	0.75	3.6	4.8
12/12/2014	Iron	1	3.4	3.4
12/12/2014	Total Suspended Solids	100	190	1.9
12/12/2014	pH	6-9 s.u.	11.4 s.u.	N/A
1/26/2015	Aluminum	0.75	11	14.7
1/26/2015	Iron	1	11	11
1/26/2015	Total Suspended Solids	100	500	5
1/26/2015	pH	6-9 s.u.	11.4 s.u.	N/A

### 2. Sampling Conducted by Waterkeeper Demonstrating Noncompliance with Effluent Limitations Codified in 40 C.F.R. Subchapter N

Date of Sample	Constituent	Effluent Limitation (mg/L)	Alpha Materials' Sample Value (mg/L)	Magnitude of Exceedance
12/2/2014	Total Suspended Solids	50	93	1.86
12/14/2014	Total Suspended Solids	50	190	3.9
1/27/2015	Total Suspended Solids	50	500	10

## Alpha Materials Notice of Intent Exhibit A

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### 3. Sampling Conducted by Waterkeeper Demonstrating Noncompliance with Water Quality Standards in the Santa Ana Basin Plan

Date of Sample	Constituent	Santa Ana Basin Plan Standard (s.u.)	Alpha Materials' Sample Value
12/12/2014	pH	6.5-8.5	11.4
1/26/2015	pH	6.5-8.5	11.4

## Alpha Materials Notice of Intent Exhibit B

Colton Fire Department Rain Gauge (Lat. 34.07, Long. -117.32)		
Date	Day of Week	Daily Precip (Inches)
10/19/2010	Tuesday	0.11
10/25/2010	Monday	0.24
11/8/2010	Monday	0.23
11/20/2010	Saturday	0.57
11/21/2010	Sunday	0.22
12/5/2010	Sunday	0.35
12/6/2010	Monday	0.16
12/16/2010	Thursday	0.24
12/17/2010	Friday	0.32
12/18/2010	Saturday	0.25
12/19/2010	Sunday	2.2
12/20/2010	Monday	2.44
12/21/2010	Tuesday	1.86
12/22/2010	Wednesday	2.95
12/25/2010	Saturday	0.18
12/26/2010	Sunday	0.1
12/29/2010	Wednesday	0.51
1/2/2011	Sunday	0.23
1/30/2011	Sunday	0.67
2/16/2011	Wednesday	0.17
2/18/2011	Friday	0.39

2/19/2011	Saturday	0.71
2/25/2011	Friday	0.41
2/26/2011	Saturday	0.94
3/20/2011	Sunday	0.78
3/21/2011	Monday	0.25
3/23/2011	Wednesday	0.37
3/25/2011	Friday	0.2
5/17/2011	Tuesday	0.1
5/18/2011	Wednesday	0.42
7/31/2011	Sunday	0.15
10/5/2011	Wednesday	0.7
11/4/2011	Friday	0.42
11/6/2011	Sunday	0.24
11/12/2011	Saturday	0.19
11/20/2011	Sunday	0.62
12/12/2011	Monday	0.45
1/21/2012	Saturday	0.46
1/23/2012	Monday	0.28
2/15/2012	Wednesday	0.24
2/27/2012	Monday	0.22
3/17/2012	Saturday	0.85
3/18/2012	Sunday	0.3
3/25/2012	Sunday	0.27
3/26/2012	Monday	0.16

## Alpha Materials Notice of Intent Exhibit B

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<b>4/11/2012</b>	Wednesday	0.3
<b>4/13/2012</b>	Friday	0.55
<b>4/26/2012</b>	Thursday	0.6
<b>10/11/2012</b>	Thursday	0.57
<b>11/8/2012</b>	Thursday	0.37
<b>11/29/2012</b>	Thursday	0.15
<b>11/30/2012</b>	Friday	0.25
<b>12/2/2012</b>	Sunday	0.11
<b>12/3/2012</b>	Monday	0.13
<b>12/12/2012</b>	Wednesday	0.19
<b>12/13/2012</b>	Thursday	1.27
<b>12/15/2012</b>	Saturday	0.11
<b>12/18/2012</b>	Tuesday	0.16
<b>12/24/2012</b>	Monday	0.31
<b>12/26/2012</b>	Wednesday	0.22
<b>12/29/2012</b>	Saturday	0.25
<b>1/24/2013</b>	Thursday	0.26
<b>1/25/2013</b>	Friday	0.57
<b>1/27/2013</b>	Sunday	0.13
<b>2/8/2013</b>	Friday	0.57
<b>2/19/2013</b>	Tuesday	0.38
<b>2/20/2013</b>	Wednesday	0.1
<b>3/7/2013</b>	Thursday	0.2
<b>3/8/2013</b>	Friday	0.58

<b>5/6/2013</b>	Monday	0.1
<b>7/20/2013</b>	Saturday	0.18
<b>8/19/2013</b>	Monday	0.1
<b>10/9/2013</b>	Wednesday	0.44
<b>11/21/2013</b>	Thursday	1.48
<b>12/7/2013</b>	Saturday	0.34
<b>2/6/2014</b>	Thursday	0.12
<b>2/27/2014</b>	Thursday	0.24
<b>2/28/2014</b>	Friday	1.63
<b>3/1/2014</b>	Saturday	0.49
<b>4/2/2014</b>	Wednesday	0.44
<b>4/25/2014</b>	Friday	0.39
<b>4/26/2014</b>	Saturday	0.37
<b>8/2/2014</b>	Saturday	0.18
<b>8/3/2014</b>	Sunday	0.47
<b>8/20/2014</b>	Wednesday	0.35
<b>9/7/2014</b>	Sunday	0.35
<b>11/1/2014</b>	Saturday	0.56
<b>11/21/2014</b>	Friday	0.13
<b>12/2/2014</b>	Tuesday	1.18
<b>12/3/2014</b>	Wednesday	0.63
<b>12/4/2014</b>	Thursday	0.17
<b>12/12/2014</b>	Friday	1.67
<b>12/17/2014</b>	Wednesday	0.36



## Alpha Materials Notice of Intent Exhibit B

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<b>12/30/2014</b>	Tuesday	0.23
<b>1/11/2015</b>	Sunday	0.29
<b>1/26/2015</b>	Monday	0.24
<b>2/22/2015</b>	Sunday	0.54
<b>2/23/2015</b>	Monday	0.56
<b>3/1/2015</b>	Sunday	0.14
<b>3/18/2015</b>	Wednesday	0.4
<b>4/25/2015</b>	Saturday	0.12
<b>5/8/2015</b>	Friday	0.31
<b>5/14/2015</b>	Thursday	0.37
<b>7/18/2015</b>	Saturday	0.55
<b>7/19/2015</b>	Sunday	0.43
<b>7/30/2015</b>	Thursday	0.15
	<b>Total Rain Days</b>	106